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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SURGICAL INSTRUMENT SERVICE)
COMPANY, INC.,) Case No.:
) 3:21-cv-03496-VC
Plaintiff,)
) Lead Case No.:
vs.) 3:21-cv-03825-VC
)
INTUITIVE SURGICAL, INC.,)
)
Defendant)
)
IN RE: DA VINCI SURGICAL ROBOT)
ANTITRUST LITIGATION)
)
THIS DOCUMENT RELATES TO:)
ALL ACTIONS)
)

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30(b)(6) DEPOSITION OF:

KEITH ROBERT JOHNSON

THURSDAY, OCTOBER 27, 2022

9:06 a.m. Mountain Standard Time

REPORTED BY:
Vickie Blair
CSR No. 8940, RPR-CRR
JOB NO. 5539883
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Deposition of KEITH ROBERT JOHNSON, the witness, taken
on behalf of the Defendant, on Thursday,
October 27, 2022, 9:06 a.m. Mountain Standard Time,
before VICKIE BLAIR, CSR No. 8940, RPR-CRR.

APPEARANCES OF COUNSEL VIA ZOOM:

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I N D E X

WITNESS	EXAMINATION	PAGE
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KEITH ROBERT JOHNSON		
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(MR. CHAPUT)		
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I N F O R M A T I O N R E Q U E S T E D

None

Q U E S T I O N S I N S T R U C T E D B Y C O U N S E L N O T T O A N S W E R

None

E X H I B I T S

EXHIBIT NO.	PAGE	DESCRIPTION
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Exhibit 135	10	Defendant Intuitive Surgical, Inc.'s Notice of Deposition of Plaintiff Surgical Instrument Service Company, Inc., Pursuant to Fed. R. CIV. P. 30(b)(6)
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Exhibit 136	57	Email chain with attachments, Bates numbers SIS095115 through SIS095139
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1 information did SIS have about Rebotix's capabilities 09:29:34

2 when SIS started its relationship with Rebotix? 09:29:41

3 MR. VAN HOVEN: Objection to form. 09:29:45

4 THE WITNESS: Can you ask that again, I 09:29:46

5 apologize. 09:29:51

6 BY MR. CHAPUT? 09:29:52

7 Q Sure. Maybe I can make it a little more 09:29:52

8 straightforward. 09:29:56

9 What did SIS know about Rebotix's 09:29:57

10 capabilities when it entered into the EndoWrist repair 09:29:59

11 business? 09:30:05

12 MR. VAN HOVEN: Objection to form. 09:30:05

13 THE WITNESS: So, based on our 09:30:05

14 longstanding relationship with Benjamin Biomedical, and 09:30:11

15 the quality products that they had been providing to us 09:30:16

16 for, like I said, over 25 years, we had every belief 09:30:19

17 that the products and services they were providing were 09:30:24

18 quality, and we went down, visited the lab, made sure 09:30:27

19 that we understood and saw the product that they were 09:30:32

20 developing and the service that they were providing, 09:30:36

21 felt really good about it, and were excited about it, 09:30:39

22 and learned everything we could about their testing 09:30:42

23 practices and what they were doing, and really pretty 09:30:45

24 much everything inside and out about that program 09:30:49

25 before we took it to market. 09:30:52

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1 BY MR. CHAPUT: 09:30:52

2 Q Have you ever observed the entirety of 09:30:56

3 what Rebotix calls a repair of an EndoWrist? 09:31:01

4 A Yes. 09:31:07

5 MR. VAN HOVEN: Object to form. 09:31:08

6 THE WITNESS: Yes. 09:31:08

7 BY MR. CHAPUT: 09:31:09

8 Q When did you observe that repair? 09:31:11

9 A I don't remember the specific dates, but 09:31:15

10 if I remember correctly, it was in the fall of '19. 09:31:24

11 Q And would you describe for me the repair 09:31:30

12 process that Rebotix performed that you observed? 09:31:42

13 A We observed the complete incoming 09:31:48

14 inspection process; we observed the chip replacement 09:31:55

15 process; and we also observed the complete outgoing 09:32:03

16 safety and function test of those devices. 09:32:08

17 Q Starting with the complete incoming 09:32:12

18 inspection that you observed, what steps were involved 09:32:24

19 in that incoming inspection? 09:32:27

20 A Being that that device is a very simple 09:32:33

21 laparoscopic instrument, we observed the functionality 09:32:39

22 of that device, the strength of the pulleys, the 09:32:43

23 sharpness of the scissors, the -- the grasping strength 09:32:48

24 of the forceps, all of those safety and function to 09:32:53

25 make sure that those devices met the original intended 09:32:57

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1 did not take any other steps to confirm that the chip 09:44:47

2 replacement process did not impact the EndoWrist's 09:44:51

3 safety? 09:44:53

4 A Not that I'm aware of. 09:45:01

5 Q Did SIS ever enter into a written 09:45:06

6 agreement with Rebotix regarding this EndoWrist 09:45:09

7 service? 09:45:12

8 A I believe that we did. 09:45:21

9 Q And when -- when would that have happened? 09:45:22

10 A If I remember correctly, it was October of 09:45:30

11 '19. 09:45:32

12 Q Apart from the EndoWrist business that 09:45:50

13 you've been describing, has SIS had any other business 09:45:53

14 relationship with Rebotix specifically? 09:45:55

15 A Not that I know of. 09:46:01

16 Q Can you -- can you walk me through how the 09:46:04

17 Rebotix Repair service worked from the SIS customer's 09:46:14

18 perspective, please. 09:46:18

19 A Can -- can you elaborate what you mean? 09:46:19

20 Q Sure. 09:46:26

21 So how did a customer go about having a -- 09:46:26

22 an EndoWrist repaired through this SIS Rebotix program 09:46:30

23 that you've described? 09:46:36

24 A So the nature of our business, we're a 09:46:36

25 national company, so we work in all the regions around 09:46:44

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1 the country, so we have team members and reps on the 09:46:48
2 ground, and we work with hospitals on a daily basis 09:46:51
3 picking up items and devices in need of service, 09:46:54
4 getting those to one of our labs, they are serviced and 09:46:57
5 then returned to the facility. 09:47:02

6 So this Rebotix program that we were 09:47:03
7 providing fell right in line with what we were doing 09:47:05
8 every day. 09:47:10

9 Q Was the service performed at one of SIS's 09:47:10
10 labs? 09:47:16

11 MR. VAN HOVEN: Objection to form. 09:47:18

12 THE WITNESS: We were -- every discussion 09:47:19
13 we had was about bringing it in-house and doing it 09:47:27
14 ourselves. In fact, a couple members of their team 09:47:29
15 came to Chicago and worked in our lab with us, and 09:47:37
16 our -- some of our technicians that were going to be 09:47:41
17 involved in this program were part of that, so we were 09:47:44
18 absolutely going to be doing this service in-house. 09:47:48

19 BY MR. CHAPUT: 09:47:51

20 Q Okay. So you said that you were "going to 09:47:51
21 be doing it in-house." 09:47:53

22 My question was: Did SIS ever actually 09:47:54
23 perform the service in-house? 09:47:57

24 A No. 09:47:58

25 Q So for all of the EndoWrist repairs that 09:48:00

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1 testing process? 10:06:18

2 A I'm not involved in the engineering and 10:06:18

3 the technical side of that, so what I'm personally 10:06:26

4 providing is more of a customer feedback, customer 10:06:29

5 thoughts, customer interest in that program, and what 10:06:35

6 it would mean to health care. 10:06:38

7 Q Describe for me the customer feedback and 10:06:39

8 customer thoughts, customer interests in that program, 10:06:47

9 please. 10:06:50

10 A How much time do we have? 10:06:50

11 Q Describe it at a high level to start with, 10:06:54

12 and we can -- 10:06:58

13 A Since this program started, the interest 10:07:01

14 from the hospital is monumental, through the roof. 10:07:03

15 The -- the interest in saving and reducing costs on 10:07:11

16 robotic surgery in the industry is something I've never 10:07:15

17 seen before in my 25 years of being in the surgical 10:07:17

18 business. 10:07:22

19 Q What hospitals have you spoken with about 10:07:23

20 the Xi program? 10:07:27

21 A Would you like me to list them? 10:07:29

22 Q Yes, please. 10:07:35

23 A This will be from the top of my head, so 10:07:36

24 I'll do the best I can, but well over -- the meetings 10:07:40

25 that we've had represent well over a thousand 10:07:46

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1 hospitals, probably. 10:07:48

2 Facility level, I'll just start to kind of 10:07:53

3 name them off regionally. Legacy Health system in 10:07:56

4 Portland, Oregon; Providence health system in the West 10:08:00

5 Coast; Sutter Health; Kaiser Permanente; memorial care; 10:08:04

6 the UC system in California; Banner Health System; 10:08:16

7 Honor Health; Baylor Scott & White in Texas; the 10:08:21

8 university health systems across the country, from 10:08:31

9 Michigan to Duke to North Carolina; Mayo Clinic; 10:08:35

10 Cleveland Clinic; Advocate Aurora; Lahey Health System; 10:08:50

11 Boston Children's Medical Center. 10:08:55

12 I can't believe I'm remembering all this 10:08:57

13 off the top of my head. 10:09:00

14 Piedmont health system, Grady in Atlanta, 10:09:02

15 Johns Hopkins. 10:09:13

16 That's the bulk of the direct hospitals 10:09:14

17 that I can recall having direct conversations with; 10:09:25

18 there's obviously much more than that. 10:09:27

19 And then, in addition to that, all the 10:09:29

20 Vizient conversations we've had, I've presented to all 10:09:33

21 four regions of Vizient, which basically covers well 10:09:41

22 over 2,000 hospitals in the United States. 10:09:45

23 Q Have you spoken with any of those 10:09:48

24 hospitals about the need for an EndoWrist repair 10:10:09

25 program to have FDA clearance? 10:10:11

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1 A I don't know if I understand what you're 10:10:20
2 asking me. 10:10:21

3 Q Have any of those hospitals told you that 10:10:22
4 they would be willing to purchase EndoWrist repair 10:10:29
5 services that were not cleared by the FT -- FDA? 10:10:33

6 MR. VAN HOVEN: Objection to form. 10:10:40

7 MR. SNYDER: Objection to form. 10:10:42

8 THE WITNESS: So I've been in the repair 10:10:42
9 business for well over 20 years, repairs don't require 10:10:44
10 FDA clearance, and to my recollection, nobody in any of 10:10:49
11 my conversations every brought up FDA clearance on the 10:10:58
12 repair. 10:11:01

13 BY MR. CHAPUT: 10:11:02

14 Q Does the Xi -- maybe let's -- let's step 10:11:02
15 back. 10:11:05

16 Does the Xi repair business that SIS is 10:11:06
17 exploring with Restore involve extending the number of 10:11:12
18 lives that an EndoWrist can be used for? 10:11:18

19 A We are currently working on developing a 10:11:20
20 program to extend the life of Xi instruments. 10:11:31

21 Q And is that the program that you have 10:11:34
22 spoken with hospitals about? 10:11:36

23 A The initial conversations we had with 10:11:47
24 hospitals was around the repair program of Si. 10:11:49
25 We then went to our recovery program, 10:11:57

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1 BY MR. CHAPUT: 11:47:09

2 Q And this is an email from you to a couple 11:47:09

3 folks at Vizient; is that right? 11:47:13

4 A Yes. 11:47:16

5 Q And what is Vizient? 11:47:21

6 A The largest GPO in the United States. 11:47:26

7 Q SIS has a relationship with Vizient; is 11:47:28

8 that right? 11:47:33

9 A Correct. 11:47:33

10 Q How does that -- how does the Vizient 11:47:33

11 relationship work for SIS? 11:47:42

12 A What -- what do you mean? 11:47:46

13 Q So what I'm trying to get at is how does 11:47:47

14 SIS end up performing services for specific customers 11:47:55

15 in the -- who -- who rely on Vizient for -- as a GPO? 11:48:02

16 A So Vizient -- Vizient contracts with 11:48:07

17 vendors from all aspects in a hospital, from toilet 11:48:12

18 paper to X-ray machines and security, they vet their 11:48:16

19 vendors, they go through a huge vetting process. 11:48:23

20 We are one of three vendors on Vizient 11:48:25

21 national contract in the instrument repair space, and 11:48:29

22 what they basically do is work with hospitals to find 11:48:35

23 ways to streamline services, reduce costs, and a lot of 11:48:38

24 other things, but that's really their main goal. 11:48:45

25 Q Okay. So a Vizient member can choose to 11:48:49

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1 enter into a contract with SIS for repair services or 11:48:51
2 it could choose another one of the Vizient service 11:48:55
3 providers; is that right? 11:48:59

4 MR. VAN HOVEN: Objection to form. 11:49:00

5 THE WITNESS: As far as I understand, 11:49:00
6 correct. 11:49:05

7 BY MR. CHAPUT: 11:49:06

8 Q What was the -- what was the reason for 11:49:10
9 your June 2020 email to Vizient that we're seeing in 11:49:13
10 Exhibit 137? 11:49:19

11 A I was given the opportunity present to the 11:49:20
12 national committee -- if I remember correctly, this was 11:50:00
13 a presentation to the national Vizient consultants that 11:50:05
14 bring cost savings opportunities to their members. 11:50:13

15 Q Got it. 11:50:19

16 If you would turn, please, to the first 11:50:20
17 attachment to the email, which is the -- a one-page 11:50:21
18 document ending 140, and this has the title "Beyond 11:50:25
19 Repair Double Check." 11:50:25

20 Do you recognize this document? 11:50:34

21 A Yes. 11:50:39

22 Q Does the beyond repair double check 11:50:39
23 program have anything to do with either da Vinci 11:50:41
24 surgical systems or EndoWrists? 11:50:44

25 A No. 11:50:50

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1 for identification and is attached 12:24:02

2 hereto.) 12:24:02

3 BY MR. CHAPUT: 12:24:02

4 Q And this is an email chain between you and 12:24:06

5 John Ayers and others at MarinHealth; is that right? 12:24:09

6 A Yes. 12:24:13

7 Q Who is John Ayers? 12:24:13

8 A John Ayers is the OR business manager at 12:24:16

9 MarinHealth. 12:24:24

10 Q Did SIS market its ability to perform 12:24:28

11 endo -- repairs on EndoWrist instruments to 12:24:31

12 MarinHealth? 12:24:35

13 A Yes. 12:24:36

14 Q Did MarinHealth and Mr. Ayers ultimately 12:24:37

15 agree to use SIS to perform repairs on EndoWrist 12:24:44

16 instruments? 12:24:48

17 A Yes, we did a lot of EndoWrists for 12:24:49

18 MarinHealth. 12:24:53

19 Q Over what period? 12:24:53

20 A I don't remember specifically, but I would 12:24:55

21 say 90 days-ish. 12:25:02

22 Q And how many instruments did you service 12:25:05

23 for MarinHealth? 12:25:07

24 A I would guess in the range of 50 to 60. 12:25:08

25 Q Did you have a signed agreement with Marin 12:25:15

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1 for that business? 12:25:21

2 A Not initially, no, it was kind of a trial, 12:25:21

3 we were doing a trial to make sure they liked it. 12:25:25

4 Q And you said "not initially." 12:25:28

5 Was there an agreement for that business 12:25:30

6 that you entered into with MarinHealth later? 12:25:32

7 A There would have absolutely been an 12:25:35

8 agreement in place until Intuitive shut us down. 12:25:37

9 Q If you would turn to the page ending 545, 12:25:40

10 there's an email in the middle of this page from you to 12:26:05

11 Mr. Ayers dated November 19, 2019. 12:26:07

12 A Okay. 12:26:16

13 Q And in the middle of that email, you say 12:26:16

14 (as read): 12:26:16

15 We are working with a large -- a 12:26:20

16 number of the largest health care 12:26:22

17 organizations in the U.S. 12:26:23

18 And then you list Banner Health, Kaiser 12:26:24

19 Permanente, Legacy Health, Advocate Aurora Health, and 12:26:28

20 Piedmont Healthcare. 12:26:32

21 As of November 2019, was SIS providing 12:26:33

22 services to any of those organizations relating to 12:26:37

23 EndoWrist instruments? 12:26:43

24 A All of them. 12:26:50

25 Q And, in response, on Monday, November 25, 12:26:51

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1 2019, Mr. Ayers wrote to you -- oh, I apologize, I was 12:27:06
2 looking at the wrong email. 12:27:16
3 If you would turn to page ending 544, I'm 12:27:18
4 looking at the email from Mr. Ayers on November 25, 12:27:22
5 2019, at 1:43 p.m. where he asks (as read): 12:27:26
6 Keith, how do the other hospitals 12:27:30
7 get past the Intuitive contract language 12:27:32
8 regarding proprietary instruments? 12:27:34
9 Do you see that question? 12:27:37
10 A What page was that again? 12:27:38
11 Q 544. 12:27:47
12 A Okay, yes, I see it. 12:27:50
13 Q And you responded in an email that same 12:27:53
14 day at 1:07 p.m. (as read): 12:27:57
15 Our service is, quote, repairing, 12:28:01
16 unquote, an Intuitive instrument. We are 12:28:04
17 not changing the instrument in any way 12:28:06
18 from its intended use or designed 12:28:09
19 functionality. 12:28:11
20 Do you see that statement? This is on 12:28:13
21 543. 12:28:19
22 A Okay. I was going the wrong direction. 12:28:20
23 Yes, I see it. 12:28:23
24 Q Okay. And what was the basis for your 12:28:24
25 statement that SIS was not changing the instrument in 12:28:27

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1 Q Did SIS ever facilitate any EndoWrist 12:34:41
2 repair services for Vizient members? 12:34:45

3 A Absolutely. 12:34:47

4 Q Which -- which Vizient members were those? 12:34:47

5 A Legacy, Legacy Health, Kaiser Permanente, 12:34:52
6 Piedmont, most of the our other big clients are 12:35:06
7 Premiere, they're not Vizient, so -- if you want -- if 12:35:20
8 you're asking me actual repairs done, I think those are 12:35:24
9 the three big ones. 12:35:28

10 MR. CHAPUT: Okay. So, Mr. Johnson, I 12:35:39
11 don't have any more questions at this point on the 12:35:41
12 30(b)(6) notice. We are going continue with your 12:35:42
13 deposition in your personal capacity, but we can go 12:35:45
14 ahead and take a break before we do that. 12:35:48

15 MR. SNYDER: Isaac, Josh Snyder, I do have 12:35:55
16 a few questions, very few, but I'm happy to save them 12:35:58
17 all till the end in the interest of efficiency. You 12:36:01
18 may cover them in the next part anyway. 12:36:06

19 MR. CHAPUT: Sure, that's fine, Josh. 12:36:08

20 MR. SNYDER: Thank you. 12:36:11

21 VIDEOGRAPHER PERAZA: This is the end of 12:36:12
22 today's deposition of SIS by Mr. Keith Johnson. We are 12:36:14
23 off the record at 12:36 p.m. 12:36:17

24 The total number of media used was four, 12:36:21
25 and will be retained by Veritext. 12:36:25

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